

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RODERICK DENNIS HAYES,

Defendant-Appellee.

UNPUBLISHED

February 22, 2011

No. 295142

Wayne Circuit Court

LC No. 09-010161-FH

Before: SAAD, P.J., and K. F. KELLY and DONOFRIO, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial conviction of two counts of assaulting, battering, resisting, or obstructing a police officer, MCL 750.81d(1). The trial court sentenced defendant to concurrent prison terms of 26 months to 15 years as a fourth habitual offender. Because sufficient evidence justified a rational trier of fact in finding guilt beyond a reasonable doubt, no *Brady*¹ violation occurred, and the trial court properly imposed a guideline sentence, we affirm. We remand for ministerial correction of the PSIR.

On March 17, 2009, defendant was in the 25th District Court in the City of Lincoln Park for a preliminary examination on another matter. After the preliminary examination, he was handcuffed in front of his body to be escorted out of the courthouse and back to the jail at the police station, which was walking distance from the court building. Defendant was escorted by two police officers and the court officer from the preliminary examination.

While being escorted back to the jail, defendant loudly voiced his displeasure with the court process and having to go back to the jail. The officers allowed defendant to voice his opinions, but at some point defendant stopped walking across the parking lots. When the officers reached for defendant's arms to get him to continue, an altercation ensued that included defendant spitting, flailing his arms, pulling away from the officers, and kicking while on the ground after being placed in a bear-hug hold and pepper-sprayed. Defendant was not subdued until officers pepper-sprayed him a second time and a fourth officer drove into the parking lot,

¹ *Brady v Maryland*, 373 US 83; 83 S Ct 1194; 10 L Ed 2d 104 (1972).

saw that defendant appeared to be trying to get away from the officers, and assisted in re-cuffing defendant's hands behind his back.

At trial, four officers and an attorney who had represented defendant at that day's preliminary exam testified concerning the incident. Not everyone saw all of the spitting, kicking, and flailing, but they all noted there was an incident or altercation where defendant was not simply being escorted from the court to the police station jail. The attorney testified that she had requested any videotape coverage of the incident, but was told there was none. The officers testified that the incident was not caught on tape because it occurred at a place either where there was not camera coverage or where the sightline was blocked by a power generator and surrounding fence.

The jury found defendant guilty on both counts. At the sentencing hearing, defendant objected to the cover sheet of the presentence investigation report (PSIR) indicating that defendant had 17 felony convictions. Defendant stated that was too many, and the trial court agreed, finding that the number should have been 13. The trial court imposed minimum sentences of 26 months even though the upper range of the guidelines allowed 46-month minimum sentences. Defendant now appeals as of right.

On appeal, defendant argues there was insufficient evidence for the jury to find him guilty, that his due process rights were violated when the prosecutor did not provide him with a videotape of the incident, and that his sentence should be reversed because the trial court did not change the PSIR cover sheet to reflect only 13 prior felony convictions.

Sufficiency of the Evidence

When considering whether the prosecution has presented sufficient evidence to sustain a conviction, an appellate court views the evidence in the light most favorable to the prosecution and "must consider not whether there was any evidence to support the conviction but whether there was sufficient evidence to justify a rational trier of fact in finding guilt beyond a reasonable doubt." *People v Wolfe*, 440 Mich 508, 513-514; 489 NW2d 748 (1992), amended 441 Mich 1201 (1992).

"[A]n individual who assaults, batters, wounds, resists, obstructs, opposes, or endangers a person who the individual knows or has reason to know is performing his or her duties is guilty of a felony punishable by imprisonment for not more than 2 years or a fine of not more than \$2,000.00, or both." MCL 750.81d(1). Under that statute "the elements required to establish criminal liability are: (1) the defendant assaulted, battered, wounded, resisted, obstructed, opposed, or endangered a police officer, and (2) the defendant knew or had reason to know that the person that the defendant assaulted, battered, wounded, resisted, obstructed, opposed, or endangered was a police officer performing his or her duties." *People v Corr*, 287 Mich App 499, 503; 788 NW2d 860 (2010). The term "obstruct" is defined by the statute as including "the use or threatened use of physical interference or force or a knowing failure to comply with a lawful command." MCL 750.81d(7)(a).

In the present case, five witnesses testified regarding the altercation between defendant and the law enforcement officers escorting him from the court to the jail. While they did not all

see the same things, they all testified to an incident where defendant was resisting, opposing, and physically interfering with the transport process. Additionally, Officer Culter was in full uniform and had testified at the preliminary exam earlier that day. Sergeant Nasser was not in uniform, but had a gun and badge on his left side, and had been present as the officer in charge at the preliminary hearing where he sat at the prosecutor's table throughout the hearing.

Based on the testimony presented, there was sufficient evidence for a rational trier of fact to find beyond a reasonable doubt that defendant opposed, interfered with, and failed to comply with police officers carrying out their duties, thus satisfying the first element of the crime. Concerning the second element of the crime, defendant had reason to know the men escorting him from the courthouse to the police station were police officers performing their official duties. The evidence presented was sufficient for a rational trier of fact to find that both elements of the crime were established beyond a reasonable doubt.

Video Coverage of the Incident

"A criminal defendant has a due process right of access to certain information possessed by the prosecution." *People v Lester*, 232 Mich App 262, 280; 591 NW2d 267 (1998), citing *Brady v Maryland*, 373 US 83; 83 S Ct 1194; 10 L Ed 2d 104 (1972). This disclosure requirement relates to exculpatory and impeachment evidence and applies to evidence that might lead a jury to find that reasonable doubt exists concerning defendant's guilt. *Id.* Constitutional questions and issues of prosecutorial misconduct are both reviewed de novo on appeal. *People v Steele*, 283 Mich App 472, 490; 769 NW2d 256 (2009); *People v Thomas*, 260 Mich App 450, 453; 678 NW2d 631 (2004).

[T]o establish a *Brady* violation, a defendant must prove: (1) that the state possessed evidence favorable to the defendant; (2) that he did not possess the evidence nor could he have obtained it himself with any reasonable diligence; (3) that the prosecution suppressed the favorable evidence; and (4) that had the evidence been disclosed to the defense, a reasonable probability exists that the outcome of the proceedings would have been different. [*Lester*, 232 Mich App at 281.]

In this case, defendant cannot establish the four elements required to establish a *Brady* violation. Defendant cannot meet the fourth element because he has not suggested or shown in any manner that there is actually a video and that such video coverage of the incident would lead to a reasonable probability that the outcome of the proceedings would have been different. In fact the record plainly and affirmatively reveals that the incident in question was not captured by the existing video equipment. Therefore, defendant's due process right of access to exculpatory evidence has not been violated.

Sentencing

An appellate court is required to affirm sentences falling within the guidelines range absent an error in scoring the sentencing guidelines or inaccurate information relied on in determining the defendant's sentence. MCL 769.34(10); *People v Jackson*, 487 Mich 783, 791; 790 NW2d 340 (2010). Determining whether to remand for resentencing requires a two-part

analysis. *Jackson*, 487 Mich at 792. The first part of the analysis asks whether the minimum sentence is within the appropriate guidelines range. If it is, then the second part of the analysis requires that the sentence be affirmed “unless there was either an error in scoring or defendant’s sentence was based on inaccurate information.” *Id.*

In this case, defendant does not suggest that the minimum sentence is outside the appropriate guidelines as a fourth habitual offender or that there was an error in the scoring of the prior record variables on the presentence information report (PSIR). Defendant’s argument is that the cover sheet to the PSIR contained inaccurate information concerning the number of felony convictions.

The trial court agreed with defendant and found that he had 13 prior convictions rather than the 17 noted on the cover sheet. The trial court proceeded to impose sentences with a minimum time of 26 months rather than the maximum allowed minimum sentence of 46 months. The trial court based its sentence on the information as gathered at the sentencing hearing.

We affirm defendant’s sentences as required by statute because his sentencing was within the appropriate guidelines range, there was no error in the scoring of the PSIR, and the sentence imposed was based on the information as discussed at the sentencing hearing. But we must remand for ministerial correction of the PSIR to reflect the trial court’s finding that defendant had only 13, not 17, prior felonies.

Affirmed. We remand only for ministerial correction of the PSIR in accordance with this opinion. We do not retain jurisdiction.

/s/ Henry William Saad
/s/ Kirsten Frank Kelly
/s/ Pat M. Donofrio